

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD LOOS,

X
ANSWER TO COMPLAINT

Plaintiff,

Index No.: 07-cv-6723(PKL)

- against -

Assigned to:
Hon. Peter K. Leisure

COMFORT INNS, INC. and CHOICE HOTELS
INTERNATIONAL, INC.,

Defendants.

X

The defendant, **CHOICE HOTELS INTERNATIONAL, INC.**, by its attorneys, **MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C.**, answering the complaint of the plaintiff herein, respectfully allege upon information and belief:

PARTIES

1. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph of the complaint designated as follows:

“1”

2. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“2”, “3”, “4”, “5”, “6” AND “8”

3. Admit each and every allegation contained in the paragraph of the complaint designated as follows:

“7”

JURISDICTION AND VENUE

4. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“9” AND “10”

FACTUAL BACKGROUND

5. Deny each and every allegation contained in the paragraph of the complaint designated as follows:

“11”

6. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph of the complaint designated as follows:

“12”

COUNT I, NEGLIGENCE

7. In response to paragraph “13” of plaintiff’s complaint, defendant repeats, reiterates and realleges each and every response to paragraphs “1” through “12” of the complaint heretofore made with the same force and effect as if fully set forth at length herein.

8. Denies each and every allegation contained in the paragraphs of the complaint designated as follows:

“14”, “15”, “16”, “17”, “18”, “19”, “20”, “21” and “22”

**AS AND FOR A FIRST SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

9. That any damages, injury and/or injuries sustained by plaintiff was caused in whole or part by the culpable conduct and fault attributable to the plaintiff, including, but not limited to, contributory negligence and/or want of care, and/or the plaintiff's assumption of the risk, and the amount recovered, if any, should be diminished pursuant to CPLR 1412 by the proportion which the culpable conduct attributed to the plaintiff's bear to the culpable conduct which caused the damages, if any.

**AS AND FOR A SECOND SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

10. That any award recovered by plaintiff must be reduced by the receipt of collateral source payments.

**AS AND FOR A THIRD SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE:**

11. The plaintiff has failed to join a necessary party.

WHEREFORE, defendant, **CHOICE HOTELS INTERNATIONAL, INC.**, demands judgment against the plaintiff as follows:

(a) dismissing plaintiff's complaint, together with the costs and disbursements of this action;

(b) in the alternative, and in the event that plaintiff prevails, the defendant, **CHOICE HOTELS INTERNATIONAL, INC.**, demands judgment determining the respective

percentage of fault on the part of the defendants and plaintiff, thereby reducing the amount of damages as against the answering defendant by the respective percentage of fault of the plaintiff.

Dated: Elmsford, New York
August 16, 2007

By:

James M. Skelly (JMS/4844)

**MARKS, O'NEILL, O'BRIEN
& COURTNEY, P.C.**
Attorneys for Defendant
**CHOICE HOTELS
INTERNATIONAL, INC.**
530 Saw Mill River Road
Elmsford, New York 10523
(914) 345-3701
File No.: 308.79853

TO: **LAW OFFICES OF ELIOT F. BLOOM, P.C.**
Attorneys for Plaintiff
RICHARD LOOS
114 Old Country Road, Suite 308
Mineola, New York 11501
(516) 739-5300

COMFORT INNS, INC.
425 East Route 59
Nanuet, New York 10954

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: ss:
COUNTY OF WESTCHESTER)

MARTHA AGIS, being duly sworn, deposes and says: deponent is not a party to this action, is over 18 years of age and resides in Pearl River, New York.

On the ____ day of August, 2007, deponent served the within **ANSWER TO COMPLAINT**, upon the parties herein stated below, by depositing and mailing same in a sealed envelope, with postage prepaid thereon, in an official depository of the U.S. Postal Service within the State of New York, at the following addresses:

TO: **LAW OFFICES OF ELIOT F. BLOOM, P.C.**
Attorneys for Plaintiff
RICHARD LOOS
114 Old Country Road, Suite 308
Mineola, New York 11501
(516) 739-5300

COMFORT INNS, INC.
425 East Route 59
Nanuet, New York 10954

MARTHA AGIS

Sworn to before me on this
____ day of August, 2007.

NOTARY PUBLIC